

## Message Text

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E.O. 11652: N/A

TAGS: CGEN, ETRD, PFOR, CPRS, JA

SUBJECT: JUDICIAL ASSISTANCE: REQUESTS FOR FEDERAL JUDGES TO  
PRESIDE OVER DEPOSITION PROCEEDINGS IN JAPAN

REFS: (A) STATE 202954 - MITSUI V. UNITED STATES; (B) STATE  
213103 - WESTINGHOUSE/MITSUBISHI; (C) STATE 256401 -  
IN RE NISSAN MOTOR CO.

1. THESE THREE CASES INVOLVE REQUESTS FOR APPROVAL BY GOJ  
FOR THE TAKING OF DEPOSITIONS IN JAPAN BEFORE FEDERAL JUDGES  
WHO IN EACH CASE ARE ALSO THE TRIAL JUDGE IN THE U.S.

2. MFA OFFICER INFORMED CONGEN THAT THESE REQUESTS FOR WHAT  
ESSENTIALLY AMOUNT TO THE EXERCISE OF A TRIAL FUNCTION BY  
A FOREIGN COURT ON JAPANESE SOIL PRESENT THEM WITH SEVERE  
DIFFICULTIES. IN THE MITSUI CASE THE NUMBER OF WITNESSES  
IS UNCERTAIN AND IT IS ESTIMATED THE PROCEEDING WILL TAKE  
THREE WEEKS IN TOKYO AND OSAKA. THE CUSTOMS COURT JUDGE  
WOULD BE ACCOMPANIED BY A COURT REPORTER AND CLERK OF COURT,  
MAKE RULINGS FROM THE BENCH, OBSERVE DEMEANOR OF WITNESSES,  
ETC ALL OF WHICH MFA CONSIDERS TO BE TRIAL RESPONSIBILITIES.

3. MFA OFFICER (NUMATA) FURTHER STATED THAT GOJ BELIEVES  
THE CONSULAR TREATY DID NOT CONTEMPLATE ANY PROCEEDINGS OF  
SUCH A NATURE. ALSO THAT MFA COULD NOT FORESEE ANY POSSI-  
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BILUTY THAT THE U.S. WOULD EVER BE CALLED UPON TO GRANT

SUCH AN UNUSUAL PRIVILEGE ON A BASIS OF RECIPROCITY SINCE UNDER GOJ LAW NO JAPANESE JUDGE WOULD EVER BE PERMITTED TO CONDUCT A SIMILAR PROCEEDING IN A FOREIGN COUNTRY.

4. IN THE MITSUI CASE, TO WHICH MOST ATTENTION WAS GIVEN, IT IS STILL NOT UNDERSTOOD WHY MITSUI CAN NOT SEND ITS WITNESSES TO THE U.S. FOR APPEARANCE BEFORE THE COURT THERE. THIS SAME VIEW IS PRESENT IN THE OTHER TWO CASES.

5. IN ORDER TO GIVE FURTHER CONSIDERATION TO THESE REQUESTS MFA WOULD APPRECIATE RECEIVING INFO AS TO WHAT OTHER COUNTRIES IN MODERN TIMES HAVE PERMITTED AMERICAN JUDGES TO PERSONALLY CONDUCT PROCEEDINGS OF A JUDICIAL NATURE WITHIN THEIR BORDERS, INCLUDING THE DATES AND NATURE OF THE PROCEEDINGS, DURATION, ETC. MUCH STRONGER EVIDENCE IS NEEDED TO JUSTIFY WHAT MFA CONSIDERS QUOTE THESE VERY DIFFICULT REQUESTS UNQUOTE.

6. COMMENT: WHILE MFA HAS NOT YET GIVEN A DEFINITE NEGATIVE ANSWER, IT IS CLEAR THAT SECURING APPROVAL WILL BE DIFFICULT. THE TRADITIONALLY SENSITIVE ISSUE OF INFRINGEMENT OF SOVEREIGNTY IS INVOLVED AS WELL AS THE POSSIBLE THREAT THAT OPPOSITION PARTIES MIGHT ATTEMPT TO CAPITALIZE ON SUCH AN ISSUE BY ATTACKS ON THE GOVERNMENT IN THE DIET. IF THE DEPARTMENT CONSIDERS IT OF MAJOR IMPORTANCE THAT THESE REQUESTS BE GRANTED, IT MAY BE NECESSARY FOR THE AMBASSADOR OR DCM TO TAKE THEM TO A HIGHER LEVEL AS WAS REQUIRED. IN CONNECTION WITH THE HISTORIC PRISONER DEPOSITION CASE OF LAST JANUARY. EVEN SO, IT IS DOUBTFUL WHETHER APPROVAL WOULD HAVE BEEN GRANTED IN THAT CASE IF THE TRIAL JUDGE HAD BEEN PRESENT.  
HODGSON

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